

CHAPTER 8
STOCKBRIDGE-MUNSEE TRIBAL LAW
YOUTH CODE
YOUTH IN NEED OF CARE

Section 8.1 Starting a Youth in Need of Care Action.

(A) Youth in Need of Care - Defined: "Youth in Need of Care" means any youth who:

- (1) Has been abandoned; or
- (2) Has no parent, guardian or custodian, available and willing to care for the minor; or
- (3) Has suffered or is likely to suffer serious psychological/emotional or physical harm inflicted upon the minor by his or her parent, guardian or custodian by other than accidental means or which is self-inflicted and which causes or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions; or
- (4) For reasons other than poverty, has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent, guardian or custodian necessary for the minor's health and well-being; or
- (5) Is being or has been subjected to sexual abuse or exploitation by or with the knowledge or acquiescence of his or her parent, guardian or custodian; or
- (6) Has a parent or guardian/custodian who requests tribal intervention and states that he or she is unable to care for, control, or provide the necessary special care or treatment for the child; or
- (7) Has been committing delinquent acts with parental pressure, acquiescence, guidance or approval; or
- (8) Has repeatedly run away from home; or
- (9) Has been committing delinquent acts and is under the age of twelve (12) years; or
- (10) Has engaged in conduct otherwise prohibited to minors and whose custodian fails to correct or regulate such conduct; or

(11) Is suffering emotional damage for which the parent(s) or guardian is unwilling to provide treatment, which is evidenced by one or more of the following characteristics:

- (a) anxiety,
- (b) depression,
- (c) withdrawal,
- (d) outwardly aggressive behavior; or

(12) Has been placed for care or adoption in violation of the Indian Child Welfare Act of 1978.

Section 8.2 Complaint.

(A) Filing: A complaint may be filed with the Stockbridge-Munsee Tribal Law Enforcement Office, the Presenting Officer's office or with the Indian Child Welfare Worker's office by any person who has personal knowledge that a youth is in need of care as defined by this Code.

(B) Contents of the Complaint: The complaint shall include:

- (1) The name, age and address of the youth who is the subject of the complaint, if known; and
- (2) A plain and concise statement of the facts upon which the complaint is based, including the date, time and location at which the alleged facts occurred; and
- (3) The signature of the complainant whose identity shall not be disclosed to anyone except the Indian Child Welfare Worker, tribal law enforcement office and the Court, unless otherwise ordered by the Court.

(C) Receipt of Complaint by Tribal Law Enforcement: Upon receipt of a complaint that a youth is in need of care, tribal law enforcement shall take the following steps:

- (1) An enforcement officer shall immediately investigate the complaint. If the enforcement officer has probable cause to believe that a youth is in need of care based on his or her investigation, the person designated from the Tribal Social Service Staff shall be notified. (A notice procedure to define when immediate notice must be given to the person designated from the Tribal Social Service Staff, and when notice may be given at a later date, shall be established by the ICWW and the Child Protective Board). Based on the investigation, a detailed written report shall be completed by law enforcement. A copy shall be delivered to the person designated from the Tribal Social Service Staff within three working days of the date the complaint was received.

(2) If the enforcement officer reasonably believes the youth is in immediate and serious danger from his or her surroundings and removal is necessary for the youth's safety or well-being, the officer may take the youth into custody, provided, that if there is sufficient time and a judge is available, the enforcement officer shall first request an emergency custody order be issued by the Youth Court in accordance with Section 8.3.

(3) If the enforcement officer takes a youth into custody without first obtaining an emergency custody order, he or she shall:

- (a) Release the youth to the youth's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or
- (b) Immediately notify the person designated from Tribal Social Service Staff and request direction as to whether the youth should be placed in shelter care and if so where; or
- (c) If the person designated from the Tribal Social Service staff cannot be reached, the officer may place the youth in shelter care, but shall continue attempts to notify the person designated from the Tribal Social Services Staff. Placement of the youth shall be in a facility approved by the Tribe for emergency shelter care. A list of who to contact in emergency placements may be set by the Child Protective Board and provided to the law enforcement office.
- (d) If the youth is not released, immediate and continuing efforts shall be made by both the enforcement officer and the person designated from the Tribal Social Services staff, youth's parent, guardian or custodian as to the circumstances surrounding the youth's custody.

(D) Receipt of Complaint by Indian Child Welfare Worker: Upon receipt of a complaint under this Chapter or receipt of notice from law enforcement that a youth is in need of care, the person designated from the Tribal Social Services Staff shall take the following steps:

- (1) Immediately confer with tribal law enforcement to determine whether further action on the complaint is necessary. If the person designated from the Tribal Social Service Staff and law enforcement determine circumstances require it, an enforcement officer may conduct the investigation.
- (2) If the person designated from the Tribal Social Service Staff determines that a youth is in an emergency situation and requires shelter care, he or she shall:
 - (a) Request an emergency custody order be issued by the Youth Court, if there is time and a judge is available; or
 - (b) Immediately place the youth in shelter care. The person designated from the Tribal Social Service Staff shall request assistance of an enforcement officer in making such placement.

(c) If the youth's parent, guardian or custodian has not been notified, the person designated from the Tribal Social Service Staff shall inform him or her at the earliest possible time and return the youth to him or her if such action is appropriate.

(d) If a youth is taken into custody and it is unlikely that he or she will be released to his or her parent, guardian or custodian within two working days, the person designated from the Tribal Social Service Staff shall immediately file a request for a Preliminary Inquiry with the Court Clerk pursuant to Section 5.203 of this Chapter.

Section 8.3 Emergency Custody Orders.

(A) Grounds: A Youth Court judge may issue an emergency custody order upon a sworn oral or written statement of facts showing probable cause to believe the youth is in need of care and that his or her health, safety and welfare will be seriously endangered if not taken into custody.

(B) Content: The emergency custody order shall specifically name the youth to be taken into custody, be signed by the judge or judicial officer, state the date and time issued, the place where the youth is to be taken and name the person or persons authorized to take the youth into custody.

(C) Execution and Duration: An emergency custody order must be executed within 48 hours of issuance. A youth taken into custody under an emergency custody order may be held until the conclusion of a Preliminary Inquiry or as ordered by the Court.

Section 8.4 Preliminary Inquiry Regarding Youths in Shelter Care.

(A) Purpose of Preliminary Inquiry: If a request for Preliminary Inquiry is filed under Section 8.2, above, a hearing will be held in Youth Court to determine:

- (1) The tribal status of the youth;
- (2) Whether there is probable cause to believe the youth is in need of care and, if probable cause is deemed to exist, to schedule a Fact Finding Hearing pursuant to Sections 8.7 et seq. of this Chapter.
- (3) The best interest of the youth and the Tribe with regard to any action to be taken;
- (4) Whether continued shelter care is necessary pending further proceedings.

(B) Request for Preliminary Inquiry - Contents: A request for Preliminary Inquiry shall include:

- (1) The name, birth date, residence, domicile and tribal status, if known, of the youth;
- (2) The name and residence of the youth's parent, guardian or custodian;
- (3) A citation to the specific section of this Code which gives the Court jurisdiction over the proceeding;
- (4) A plain and concise statement of the facts which support the allegation that the youth is in need of care; and
- (5) If the youth is in shelter care, the place of shelter care and the time taken into custody.

(C) Preliminary Inquiry - Time of Hearing: A Preliminary Inquiry shall be conducted within two working days of filing a request for Preliminary Inquiry.

(D) Notice: Notice of the Preliminary Inquiry shall be given to parties by the law enforcement office pursuant to Section 7.12 (A) (1), (3), and (4). Notice shall include:

- (1) The name of the Court;
- (2) A copy of the Request for Preliminary Inquiry; and
- (3) The date, time and place of the Preliminary Inquiry.

(E) Presence of Parent, Guardian or Custodian: If the youth's parent, guardian or custodian is not present at the Preliminary Inquiry, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Inquiry shall be recessed for a reasonable period of time and the Indian Child Welfare Worker shall be directed to make continued efforts to obtain the presence of the parent, guardian or custodian.

(F) Presence of Counsel - Continuance: The Youth Court may not continue a Preliminary Inquiry solely to allow a party to obtain legal representation; however, a party who appears at a Preliminary Inquiry without legal representation does not waive his or her right to appeal any procedural or substantive error made at the Preliminary Inquiry by failing to make objections during the Inquiry, if legal representation is obtained and written objections are made before the start of the Fact-Finding Hearing.

Section 8.5 Court's Findings.

(A) Release of Youth: If at the conclusion of the Preliminary Inquiry the Youth Court finds that there does not exist probable cause to believe the youth is in need of care, the youth shall be released to the custody of his or her parent, guardian, or custodian.

(B) Youth in Need of Care: If the Youth Court finds that there exists probable cause to believe that the youth is in need of care, it may order:

- (1) That the youth be released to his parent, guardian, or other custodian pending further proceedings; or
- (2) That shelter care be continued if the Court finds that there is probable cause to believe that:
 - (a) No parent, guardian, custodian, or other person is able or willing to provide adequate supervision and care for the youth; or
 - (b) The youth will run away or otherwise be unavailable for further proceedings;
 - (c) The youth will be in an emergency situation if he is returned to his parent, guardian or other custodian;
 - (d) The youth will cause serious damage to persons or property; or
 - (e) The youth requires medical care, treatment, or evaluation that he could not otherwise receive if he were to remain in the custody of his parent, guardian, or other custodian; or
 - (f) The youth has been abandoned; or
- (3) That the youth and his parent, guardian or other custodian, or any other interested person within the court's jurisdiction, attend Child Protective Board Mediation, and shall advise the parties as to the date, time and place of such mediation; and
- (4) That the parties shall keep the court informed as to any changes in their mailing addresses.

Section 8.6 Shelter Care Placement.

(A) If a child is placed in Shelter Care under this Code, the court shall follow the placement preferences below:

- (1) A private home recommended by the Child Protective Board (this private home will usually be a responsible member of the youth's extended family); or
- (2) A foster home licensed or approved by the Tribe; or
- (3) A shelter care facility approved by the Tribe.

Section 8.7 Fact Finding Hearing - Scheduling at Preliminary Inquiry.

If it appears that a Petition for Fact Finding will soon be filed based upon the findings at the Preliminary Inquiry, the court shall set a date and time for the Fact Finding Hearing pursuant to Section 8.8 (D), following, and shall advise the parties of the date, time and place of that hearing, and shall order their attendance at the hearing. If the parent, guardian or other custodian is not present at the Preliminary Inquiry, notice of the Fact-Finding Hearing shall be served in accordance with Section 7.12.

Section 8.8 Fact Finding Hearings.

(A) Purpose: The Court shall conduct a Fact Finding Hearing for the sole purpose of determining whether a youth is in need of care.

(B) Request for Fact Finding Hearing: A request for a Fact Finding Hearing may be initiated at the Preliminary Inquiry under Section 8.7, above, or by a petition filed by the Presenting Officer upon recommendation of the Indian Child Welfare Worker that it is in the best interest of the youth and the tribal community.

(C) Petition - Contents: A petition for Fact Finding Hearing shall include:

- (1) The name, birth date, residence, domicile, and tribal status of the youth;
- (2) The names, residences and tribal status of the youth's parent, guardian or custodian;
- (3) A citation to the specific section of this Code which gives the Court jurisdiction over the proceedings;
- (4) A detailed statement of facts and reasons which support the allegation that the youth is in need of care. However, if a Request for Preliminary Inquiry was filed previously, the petition may incorporate by reference the contents of the Request; and
- (5) If the youth is in shelter care, the place of shelter care and the time taken into custody.

(D) Time of Hearing: The Court shall set the date for hearing within thirty-five (35) days of receipt of a petition. Failure to comply with the time limits, without good cause shown, shall result in dismissal of the petition.

(E) Notice: Notice of Hearing shall be served on all parties in the manner specified under Section 7.12 of Chapter 7. Service shall be executed by tribal law enforcement, the court clerk or other person designated to perform this duty. Notice shall be served at least five (5) days prior to the date of the hearing. The notice shall include: the name of

the court; the date of the hearing; the time and place of the hearing; the purpose of the hearing, and a copy of the petition. Notice shall be served on:

- (1) The youth;
- (2) The youth's parent, guardian custodian;
- (3) Any person the Court believes necessary for the hearing; and
- (4) Any person the parties believe necessary for the hearing.

(F) Testimony: The Court shall hear testimony concerning the circumstances which gave rise to the petition. Before testifying at a Court hearing, every witness shall first take an oath swearing to tell the truth.

(G) Rules of Evidence - Purpose: The purpose of these rules of evidence is to ensure that the Court is able to determine the truth of a matter with a minimum of delay, confusion and uncertainty.

(H) Rules of Evidence - Reliability: The rules of evidence used in state and federal courts shall not apply to hearings before the Stockbridge-Munsee Youth Court. Where there is more than one kind of evidence about the same subject, the Court should hear the most reliable kind of evidence. In oral testimony, persons who testify from personal knowledge, such as first-hand observation of or participation in the event described, shall be preferred as witnesses to persons who have second-hand knowledge of the event.

(I) Rules of Evidence - Relevance: Evidence submitted during Court hearings must be related either to the issues before the Court or to the weight and credibility which should be given to other evidence. When questioned by the Court or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.

(J) Rules of Evidence - Ruling by Court: When the relevance or reliability of evidence is challenged and the Court decides whether or not to use the evidence, it shall explain the decision.

(K) Admissibility of Statements Made at the Preliminary Inquiry: All statements made at the Preliminary Inquiry are part of the court record and are admissible in the Fact Finding Hearing unless ruled to be inadmissible by the court.

(L) Questioning Witnesses - Order Called: The Court shall determine the order in which parties or their representatives shall be allowed to question witnesses. The Court shall protect the witnesses from harassment or unnecessarily repetitive questioning. The Court itself may call and question any witnesses.

(M) Questioning Witnesses - Leading Questions: When questioning a witness, the Court and parties or their representatives shall not ask questions in such a way as to suggest the answer desired unless the witness is being cross-examined or is clearly hostile to the person asking questions.

(N) Written Testimony: Testimony of a witness may be presented in written form if the witness is unable to appear in person to testify and if the evidence presented in writing is not contradicted by other parties, or if the written testimony is offered to support a motion or an uncontested request for relief. Written testimony should show clearly who gave it and when the witness gave it. Written testimony shall contain a statement attesting to the truthfulness of the testimony and shall be signed before a tribal or state authorized notary, if possible. If no notary available, to be signed and witnessed by 2 disinterested parties.

(O) Rules for Discovery: The rules for discovery shall be the same as those rules established by the Stockbridge-Munsee Community Court.

(P) Burden of Proof: The burden of proof shall be clear and convincing evidence.

Section 8.9 Disposition.

(A) Pre-dispositional Report - Purpose: The Indian Child Welfare Worker, in consultation with the Child Protective Board and/or Social Services staff, shall prepare a written report describing all reasonable and appropriate alternatives.

(B) Predispositional Report - Contents: The report shall contain a specific plan for the care of and assistance to the youth and his or her parent, guardian or custodian. The report shall explain the necessity for the proposed plan and its benefits to the youth and his or her parent, guardian or custodian.

(C) Pre-dispositional Report - Placement Recommendations: If placement with someone other than the youth's parent, guardian or custodian is recommended, the report shall contain specific reasons for not recommending placement of the youth with his/her parent, guardian or custodian.

(D) Pre-dispositional Report - Service: The Indian Child Welfare Worker shall mail the Pre-dispositional report to the Court and all parties to the proceeding at least five (5) days before the dispositional hearing.

(E) Additional Reports: Any party to an action pursuant to this Code may file a Pre-dispositional report which shall include his or her recommendations for consideration by the Court.

(F) Dispositional Hearing - Time: A dispositional hearing may be held in conjunction with the Fact Finding Hearing if the Court determines that such action is in the best interest of the youth. If the dispositional hearing is separate from the Fact Finding Hearing, it shall take place within 35 days of the Fact Finding Hearing.

(G) Dispositional Hearing - Notice: The dispositional hearing shall be set at the Fact Finding Hearing and such pronouncement shall constitute notice.

(H) Conduct of Dispositional Hearing: The Court shall hear testimony to determine the proper disposition for the youth. The Court shall consider the Pre-dispositional report submitted by the Indian Child Welfare Worker and any other reports submitted for review.

All parties shall be given the opportunity to contest the factual contents and conclusions of the Pre-dispositional reports submitted.

(I) Dispositional Alternatives for Youths in Need of Care: If a youth has been determined to be in need of care, the Court may take any of the following dispositions which are listed by priority:

- (1) Permit the youth to remain with his or her parent, guardian or custodian, subject to any such limitations and conditions the Court may order;
- (2) Place the youth with an extended family member subject to any limitations and conditions the Court may prescribe;
- (3) Place the youth in a foster home which has been licensed or approved by the Tribe, subject to any limitations and conditions the Court may order;
- (4) Place the youth in a shelter care facility approved by the Tribe;
- (5) Transfer legal custody to an agency responsible for youths in need of care, qualified to receive and care for the youth; or
- (6) Recommend that termination proceedings begin.
- (7) Order the youth to participate in a substance abuse treatment program in appropriate cases. This may be ordered in addition to any other disposition.

(J) Dispositional Order Is Final: The dispositional order constitutes a final order for purposes of appeal.

Section 8.10 Review and Modification of Dispositional Order.

(A) Review and Modification: Dispositional orders are to be reviewed by the Court at least every six (6) months. A dispositional order may be modified upon a finding of a good to modify.

(B) Motion to Modify: The Court shall review a dispositional order at any time upon the motion of the following to modify:

- (1) The youth;
- (2) The youth's parent, guardian or custodian;
- (3) The Indian Child Welfare Worker;
- (4) The Presenting Officer.

(C) Review Hearing: The Court shall conduct a hearing to review its dispositional order at least once every six months, or earlier upon motion of any party.

The Court shall review the performance of the youth, the youth's parent, guardian, or custodian, the Indian Child Welfare Worker, and any other parties to the disposition.

(D) Standard for Modification: If the request for review of a disposition is based on the alleged violation of a Court order, the Court shall not modify its dispositional order unless it finds clear convincing evidence of the violation.

Section 8.11 Child Protective Board Mediation Panel Hearings.

(A) Request for Mediation Hearing: A mediation panel hearing may be requested by the Presenting Officer, the Indian Child Welfare Worker, or by order of the Court. The request shall be filed in writing with the Child Protective Board which shall, upon receipt of such request, notify the Youth Court.

(B) Notice of Hearing: Written notice of the mediation hearing shall be given to the youth and his or her parent, custodian or guardian and to all other parties to the mediation, as soon as the time and place for the hearing has been established. The notice shall include:

- (1) The name of the Court;
- (2) A citation to the section of the Code which gives the Court jurisdiction over the proceedings; and
- (3) The date, time and place of the mediation hearing.

(C) Time of Hearing: The Child Protective Board shall schedule the mediation hearing as soon as possible.

(D) Service of the Notice of Hearing: The notice shall be delivered by the Court Clerk, Indian Child Welfare Worker or case developer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by any other method reasonably designed to give notice to the necessary persons.

(E) Procedure of the Mediation Panel Hearing: The following procedures apply to hearings of the Mediation Panel:

- (1) The hearing shall be informal and conducted according to the procedure established by the Child Protective Board for panel mediation.
- (2) No substantive information obtained at a Child Protective Board mediation hearing may be admitted into evidence at a court hearing or any other court proceeding unless all parties agree otherwise. However, the terms of an agreed disposition are admissible as evidence at a subsequent proceeding involving the care of the youth.
- (3) If an agreed disposition is reached, it shall be set forth in writing, including any conditions or requirements to be performed. The youth, the youth's parents, custodian or guardian and the Presenting Officer, or Indian Child Welfare Worker on behalf of the Tribe shall sign the agreed disposition.
- (4) The agreed disposition shall be for a fixed period of time and shall be filed with the Youth Court.
- (5) If no agreement is reached during the mediation hearing or if the parties fail to appear at the scheduled hearing, a petition to initiate a court hearing may be filed by the Presenting Officer or, if a petition has been filed, the Presenting Officer may proceed to the Fact Finding Hearing pursuant to this Code.

(F) Monitoring - Failure to Comply With Agreement: The Indian Child Welfare Worker shall monitor the agreed disposition throughout its term. If he or she finds that there has been a failure to comply with the terms of the agreed disposition, he or she may request another mediation hearing or recommend that the Presenting Officer file a petition or proceed with Fact Finding.

After a petition is filed, the youth or his or her parent, custodian or guardian may challenge before the Court the allegation of non-compliance with the agreed disposition. If the Court finds that the parties have complied, it shall dismiss the petition and reinstate the agreed disposition.

Section 8.12 Agreed Disposition as Court Order.

The Stockbridge-Munsee Community Youth Court may enter an order based on an agreed disposition reached during a Child Protective Board Mediation Hearing provided that:

- (A) A petition for Fact Finding has been filed;
- (B) The Court has jurisdiction over the parties and the subject matter of the case;

(C) All parties have notice of the terms of the agreement; and

(D) If the agreement provides that the youth will be placed outside his or her parent(s), custodian(s) or guardian's home, the parties sign the agreement in the presence of the judge.